

Appl. No. 10/508,924
Amdt. Dated February 28, 2007
Reply to Office Action of November 29, 2006

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REMARKS

Applicants thank Examiner for acknowledging receipt of foreign priority document, Japanese Application No. JP2002-085095, that has been submitted pursuant to 35 U.S.C. § 119 and/or PCT Rule 17.2(a).

New claims 39 and 40 have been added in order to alternately define the invention as disclosed in the specification.

Without conceding the propriety of the Examiner's position, and solely to expedite prosecution, claims 4 and 8 have been cancelled without prejudice or disclaimer.

Applicants thank the Examiner for the indication of allowable subject matter in claims 9 - 13. Applicants have amended these claims solely to improve the language of the claim and to remove the limitation that the magnetic flux concentrator be formed physically on the lateral sides of the tunnel magnetoresistance element. As currently amended, claims 9 and 10 allow for an intervening layer to be formed between the tunnel magnetoresistance element and the magnetic flux concentrator, which also makes claim 10 more consistent with the language used in dependent claim 11. Applicants submit that claims 9 - 13 remain allowable for the same reasons set forth on pages 7 - 8 of the last Office Action.

Applicants respectfully request reconsideration of Examiner's rejection of claims 1 - 8 and 14 - 19 under 35 U.S.C. §102(b). The Examiner has rejected these claims in view of the cited prior art reference of Saito *et al.* (U.S. Patent App. No. 2002/0034094).

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Regarding claims 1 – 3 and 5 – 7, Applicants submit that the *Saito* reference fails to disclose at least the claim limitation requiring that the magnetic flux concentrator is formed "at least on the lateral sides of said first wiring." (emphasis added). The claim term 'on,' when read in light of its ordinary meaning and how the term is used throughout the specification, clearly means that the two structures (the magnetic flux concentrator and the first wiring) are formed in an adjoining relationship, without any intervening layers therebetween. As shown in Fig. 1C of the *Saito*, the reference fails to disclose such a relationship. Rather, *Saito* discloses that an intervening insulating layer film 19 should be formed between the lateral side surfaces of the wiring layer 15 and the magnetic flux concentrator element 18. For at least this reason, Applicants submit that the Examiner's rejection of claims 1 – 3 and 5 – 7 must be withdrawn, and these claims placed into condition for allowance.

Regarding claims 14 – 19, Applicants note that the Examiner has failed to set forth any citation to any portion of the *Saito* reference which teaches a switching element as claimed. Rather, pages 5 – 7 of the last Office Action merely make an un-supported allegation that *Saito* teaches such a switching element. Applicants have amended the claims in order to prevent the selection transistor disclosed in *Saito* from reading on the currently claimed invention. As shown in Fig. 22 of Applicant's disclosure, the p-n junction switching element 14 is formed in geometric proportions to be co-extensive with the geometric proportions of the TMR element formed above it. *Saito* fails to disclose such a device. For at least this reason,

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Applicants submit that the Examiner's rejection of claims 14 - 19 must be withdrawn, and these claims placed into condition for allowance.

Examiner's remaining references cited but not relied upon, considered either alone or in combination, also fail to teach applicant's currently claimed invention. In light of the foregoing, Applicants respectfully submit that all claims now stand in condition for allowance.

Respectfully submitted,

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